

AGENDA ITEM

MOCIIIA

State Bar Rule Revision –
Continuing Legal Education
Rules, Request for Public
Comment

DATE: October 26, 2006

TO: Members, Board Committee on Member Oversight

FROM: Starr Babcock, Senior Executive, Member Services
Dina DiLoreto, Director of Administration, Member Services

SUBJECT: State Bar Rule Revision – Continuing Legal Education Rules, Request for Public Comment

ATTACHMENTS:

- Attachment 1 – Memorandum of February 28, 2006 to MOC
- Attachment 2 – Proposed MCLE Rules for Members
- Attachment 3 – Proposed MCLE Rules for Providers
- Attachment 4 – Current MCLE Rules

EXECUTIVE SUMMARY

The State Bar has undertaken a Rules Revision Project to make the rules of the State Bar simpler, clearer, and more uniform. An explanation of the project was provided to the committee in a memorandum of February 28, 2006 (Attachment 1). The first set of revised rules addressed membership privileges and responsibilities and was approved by the board on the recommendation of the committee. The second set of rules addresses continuing legal education responsibilities of members and education providers, and the committee is being asked to approve release of these proposed rules for public comment. The proposed continuing education rules applicable to members would appear in the new rule structure in Title Two, Rights and Responsibilities of Members, in Division 4, on Continuing Minimum Legal Education (Attachment 2). The proposed rules applicable to providers would appear in the new structure in Title Three, Programs and Services, as part of Division 5, on Vendors of Programs and Services (Attachment 3). These rules would replace the MCLE Rules adopted by the Board of Governors on December 8, 1990, and last revised on May 17, 2003 (Attachment 4).

The proposed rules would make only one substantive change. Currently, active members are required to take one hour of CLE in that deals with the prevention, detection, and treatment of substance abuse that affects professional competence. Proposed rule 2.72(A)(3) would modify this requirement by adding mental illness as an alternative topic.

BACKGROUND

The proposed rules would make only one substantive change. The prevention, detection, and treatment of mental illness that affects professional competence has been added as an option for the one hour of CLE now required for substance abuse that impacts an attorney's professional life. See proposed Rule 2.72 (A)(3). This change reflects the addition of mental illness to section 6230 of the Business and Professions Code: "It is the intent of the Legislature that the State Bar of California seek ways and means to identify and rehabilitate attorneys with impairment due to abuse of drugs or alcohol, or due to mental illness, affecting competency so that attorneys so afflicted may be treated and returned to the practice of law in a manner that will not endanger the public health and safety." An additional change that should be acknowledged because of its relationship to MCLE is new rule 2.32 (C), which was adopted by the board this year. This rule requires that a member involuntarily enrolled as inactive for MCLE noncompliance accrue annual membership fees at the inactive rate. Previously such a member was billed at the active rate.

Apart from this single substantive change, the differences in the proposed and current rules are organizational and stylistic. Because current MCLE rules for members and educational providers are bundled together, members and providers are not readily able to identify the rules that apply to them. Rules that deal with member responsibilities are followed by rules that deal with providers; these in turn are followed by rules that deal with members. In addition to these organizational problems, the rules are prolix. At times they selectively reiterate authority, incorporate procedures that can be moved offline, and illustrate requirements in overly technical terms.

The means by which the proposed rules have simplified current rules are described below.

Organization simplified. To better assist members and providers locate the rules specific to them, the rules for each audience have been grouped together and placed in different titles. The number of rules has been reduced as well. Currently there are 42 rules under 15 topics, not counting subparts that might be counted as separate rules (for example, rule 7.2, Requirements for All Providers has 9 such subparts). There are 30 proposed rules. New Title Two has 20 under four topics, and new Title Three has 10 under three topics.

Within a title, rules have been reorganized to anticipate the needs of readers. Information on the types of education eligible for CLE credit, for instance, is now found under separate rules on participatory education, self-study, self-assessment tests, speaking, teaching, legal specialization, programs in other jurisdictions, individual activities, and programs sponsored by the California District Attorneys Association and the California Public Defenders Association. The proposed rules reduce these types by nearly half: attending programs and classes, speaking, teaching, self-study, and education in an approved jurisdiction.

Number of words reduced. The current rules are more than 5000 words long. The proposed rules are approximately 2400 words long. One way rules have been shortened is by offloading procedures to forms whenever possible. For instance, the current requirements for providers set forth provider obligations and then detail how they must be satisfied. The proposed rule, on the other hand, lists each responsibility concisely. It does this principally by requiring compliance with the standards that any educational activity must meet, listed in proposed 3.501, as well as all other applicable rules. It also offloads operational procedures to forms, where procedures are incorporated into instructions. This approach makes the new rule easier to read and gives the State Bar flexibility to make operational changes.

Current rule	Proposed rule
<p>7.2 REQUIREMENTS FOR ALL PROVIDERS</p> <p>All approved providers and providers of approved continuing legal education activities shall agree to the following:</p> <p>7.2.1 An official record verifying all members' attendance at the activity shall be maintained by the provider for at least four years after the completion date. The provider shall include the member on the official record of attendance only if the member's signature or other verifiable proof of attendance was obtained at the time of attendance at the activity. The official record of attendance shall be provided to the State Bar upon request at no cost to the State Bar. It is not the intent of the State Bar that a provider's failure to comply with this recordkeeping requirement give rise to a lawsuit by a member against the provider;</p> <p>7.2.2 The official record of attendance shall state the name and bar number of the members, the time, date, location, title, and the amount of California approved education credit offered for the education activity, including a breakdown of credit offered for the subjects set forth in section 2.1.1, 2.1.2, and 2.1.3 based on the formulas set forth in section 5.0;</p> <p>7.2.3 Providers shall provide a certificate of attendance to all members attending continuing legal education activities sponsored by the provider. The certificate of attendance shall state the time, date, location, title, and the amount of California approved education credit offered for the education activity or activities, including a breakdown of credit offered for the subjects set forth in section 2.1.1, 2.1.2, and 2.1.3 based on the formulas set forth in section 5.0;</p> <p>7.2.4 Providers approved under section 9.0 shall include a statement in any materials promoting their approved provider status or one or more individual activities, certifying that the provider is a State Bar of California approved MCLE provider.</p> <p>If an application for approved provider status pursuant to section 9.0 is pending before the State Bar and the promotional materials refer to California MCLE credit, the statement shall indicate that an application is pending.</p> <p>Examples: "[Provider] is a State Bar of California approved MCLE provider" or "[Provider] certifies that an application is pending for approval as a</p>	<p>3.502 RESPONSIBILITIES OF EVERY PROVIDER</p> <p>Every provider must</p> <p>(A) submit an application for approval of an activity in accordance with State Bar procedures and pay the appropriate processing fee;</p> <p>(B) comply with any State Bar rules and terms applicable to an approved activity;</p> <p>(C) retain the Record of Attendance for an activity for four years from the date of the activity and submit it to the State Bar upon request;</p> <p>(D) furnish a CLE Certificate of Attendance to each attendee who has met the requirements for the activity;</p> <p>(E) give each attendee who completes an activity a State Bar CLE Activity Evaluation Form or its equivalent; retain the completed form for at least one year; and submit it to the State Bar upon request;</p> <p>(F) permit State Bar auditors to attend or otherwise audit an activity at no cost; and notify the State Bar in writing of any change in the name, address, or other contact information required by the State Bar.</p>

State Bar of California approved MCLE provider."

7.2.5 Providers sponsoring individual activities approved under section 8.0 shall include a statement in any promotional materials for one or more individual activities, certifying that the activity or activities have been approved for MCLE credit by the State Bar of California. If an application for approval of an individual activity pursuant to section 8.0 is pending before the State Bar, and the promotional materials refer to California MCLE credit, the statement shall indicate that an application is pending.

Examples: "[Provider] certifies that this activity has been approved for MCLE credit by the State Bar of California" or "[Provider] certifies that an application is pending for approval of this activity for MCLE credit by the State Bar of California."

7.2.6 Providers shall provide to all participants in an activity being offered for California MCLE credit, in advance of the activity, accurate information as to the amount of approved credit offered, if any, for the subjects set forth in sections 2.1.1, 2.1.2 and 2.1.3.

7.2.7 Providers shall agree to the monitoring of their compliance with sections 7.1 and 7.2 at no cost to the State Bar including, but not limited to, allowing in-person observation of all approved continuing legal education activities by members of the State Bar Board of Governors, or designees of the Board, and the State Bar staff; and

7.2.8 Providers shall make available to each participant a copy of the State Bar approved Education Activity Evaluation Form or other evaluation form, provided that such other form solicits at least the same information solicited in the State Bar approved form. Providers shall maintain the completed Education Activity Evaluation Forms for a period of not less than one year after the activity and shall provide the completed evaluation forms to the State Bar upon request at no cost to the State Bar.

7.2.9 Providers shall notify the State Bar in writing of any change in the name, address or telephone number of the provider or of the individual designated by the provider as its contact person.

Complex examples and formulas eliminated. Current rules that allow proportional reduction of the MCLE requirement also illustrate how the proposed rules can be streamlined. Normally an active member must earn 25 credit hours of CLE in a 36-month compliance period. This total number of hours may be reduced, however, if a member has not been active for the entire compliance period. The concept for proportional reduction is quite simple, but the current rule explains it in detail with technical formulas, examples, and a 25-row table. The proposed rule eliminates this complexity by simply stating the underlying concept and pointing the reader to an online tool that applies it.

Current rule	Proposed rule
<p>2.2 PROPORTIONAL REQUIREMENT New admittees, members who are on inactive status for a portion of a compliance period, and members who are exempt pursuant to section 6.0 for a portion of a compliance period, must comply with a proportional continuing legal education requirement.</p> <p>2.2.1 Where the member is on active status and not exempt for four months or less in a compliance period, the member is not required to comply with the education requirement for that compliance period.</p> <p>2.2.2 Where the member is on active status and not exempt for more than four months in a compliance period, the member shall be required to complete a total number of hours of approved continuing education activities and, within those total hours, a number of hours of education in legal ethics in proportion to the number of months in the compliance period that the member was on active status and not exempt from the requirement. Fractions of hours shall be rounded up to the next whole number.</p> <p>Formula for calculating total hours required: $[(\text{Number of months on active status and not exempt}) \times 25] \div 36 = \text{Total Hours Required}$ Example: 15 months on active status and not exempt $\times 25 = 375 \div 36 = 11$ total hours required (10.42 rounded up to the next whole number).</p> <p>Formula for calculating required hours of legal ethics, within the total hours required: $[(\text{Number of Total Hours Required in Legal Ethics months on active status and not exempt}) \times 4] \div 36 = \text{Total Hours Required in Legal Ethics}$ Example: 15 months on active status and not exempt $\times 4 = 60 \div 36 = 2$ hours of legal ethics required (1.67 rounded up to the next whole number).</p> <p>The following table shows the results of applying these formulas: [table omitted].</p> <p>2.2.3 Members completing a proportional requirement shall not be required to complete one hour of approved continuing legal education relating to prevention, detection, and treatment of substance abuse or elimination of bias in the legal</p>	<p>2.72(C) A member may reduce the required 25 hours in proportion to the number of full months the member was inactive or exempt in the 36-month compliance period. Up to half the reduced hours may be self-study. A tool for applying this formula is available at the State Bar Web site.</p>

profession 2.2.4 Members on inactive status or exempt for a portion of a compliance period may claim credit for education activities taken at any time during the compliance period for which the education is required.	
---	--

Authority referenced rather than reiterated whenever possible. One example illustrates this point well. Active members exempt from MCLE requirements by reason of government employment may not otherwise practice law with one exception: in some instances they may provide pro bono legal services through a qualified service center or project. The exception obviously applies to few members. The current rule summarizes the statutory grounds for the pro bono exception. The proposed rule simply points to the statute that defines what "qualified" means. It does not selectively reiterate the statutory requirements.

Current rule	Proposed rule
6.1.5 Effective February 1, 1997, members otherwise exempt from the continuing legal education requirement pursuant to sections 6.1.3 and 6.1.4 may provide pro bono legal services through a qualified legal services project or support center receiving funds pursuant to Business and Professions Code section 6210, et seq., provided that the sponsor of the pro bono project or support center ensures that members volunteering pursuant to this section have received the necessary training or otherwise possess the necessary skills to provide quality service and maintain professional standards.	2.54 (B) Members whom this rule exempts by reason of their employment with the State of California or the United States government may provide pro bono legal services through a qualified legal services project or a qualified support center. ¹ ¹ . Business & Professions Code § 6213.

At the earliest, these rules could be submitted to the board for possible adoption in the spring of 2007.

FISCAL IMPACT

No fiscal impact is anticipated.

BOARD BOOK IMPACT

There is no board book impact.

PROPOSED BOARD COMMITTEE ACTION

Should the Board Committee determine to adopt the recommendation of staff it would be appropriate to adopt the following resolution:

RESOLVED, that the Board Committee on Member Oversight directs the publication of the proposed new rules on continuing legal education in the form attached to these minutes and made a part thereof for a ninety day public comment period; and it is

FURTHER RESOLVED that publication of the foregoing is not, and shall not be construed as, a recommendation by the Board Committee.

DATE: February 28, 2006

TO: Board Committee on Member Oversight (MOC)

FROM: Starr Babcock, Senior Executive, Member Services
Peggy Van Horn, Senior Executive, Finance

SUBJECT: State Bar Rule Revision Project

Executive Summary

The rules of The State Bar of California are being revised to make them simpler, clearer, and more uniform. Existing rules are often complex and hard to understand. Because there is no single organizational structure for all rules, rules can be hard to find. To make them more accessible, the rules need to be placed within a comprehensive structure. Within that new structure, the rules are being recast using plain language principles. This memo describes the process and principles for creating a new overall structure, along with a State Bar Style Guide and drafting procedures.

A draft rules structure that simplifies the categories of State Bar rules is submitted for informational purposes.

Background Discussion

Revising all State Bar rules is a daunting project that must be undertaken in stages with the collaboration of many subject matter experts. This agenda memo is informational only and is intended to apprise the Board of the strategies being proposed to address pervasive problems with the rules. The Board will be asked to review the new organizational structure and authorize staff to release the revised rules for public comment in agenda memo IIID.

Unlike court rules that are organized by titles, State Bar rules lack an organizational scheme. This problem is evident in the "Rules and Regulations" section under Attorney Resources at the State Bar Web site. This random list of "Selected Legal Provisions" includes a link to "Supreme Court Order Pursuant to Statutes 1981, Chapter 789." This particular order deals with Interest on Lawyer Trust Accounts (IOLTA), a fact that would be apparent only to people who already know what they are looking for. Why is a court order listed as a State Bar rule? Is the order a rule? If so, in what sense? Or is the order authority for IOLTA rules? If it is, those other rules cannot be found here. They are, in fact, in a section of Attorney Resources called Special Services that is not accessible from the "Rules and Regulations."

Organizing all rules within a comprehensive structure would bring order to the chaos that the State Bar Web site has inherited. Like the California Rules of Court, the State Bar rules would be organized into titles. The first title would address global issues. It would define what State Bar rules are, identify legal authority, provide rules of construction, and define commonly used terms. The remaining rules in the State Bar universe would be organized into titles that deal with member rights and responsibilities, programs and services, admissions and discipline, and governance. Every rule of the State Bar would fit within this structure. Finding a rule within this structure should not require expertise.

Apply plain language principles

“Plain language principles” are none other than the basic rules of clear writing applied to the gobbledygook of government and big business. Three plain language principles illustrate how State Bar rules can be improved.

A bedrock principle of good writing is to avoid passive voice in favor of active, because active voice is usually more direct and less wordy. Applying this principle transforms these initial words of a rule, “The identity authentication procedures available at the State Bar Web site may be used by a member to request a change in the State Bar record,” into a rule that starts with the actor, “A member may use.”

Another essential plain language principle is to clarify—and shorten—sentences by eliminating redundant or unnecessary words. Here, for instance, striking redundancies would be the first step toward improvement: “Members who are billed membership fees for the first time (~~a.k.a. new admittees~~) shall have a waiver (~~fee reduction~~) documentation and payment deadline established that is eight (~~8~~) weeks from the date of their initial fee statement; this deadline shall be determined and printed on their initial fee statement.” State Bar rules contain myriad other examples of wordiness and redundancy, perhaps the most troublesome of which are rules that do little more than reiterate statutes or Rules of Court. Such restatements are problematic because they typically introduce variations that invite misinterpretation.

Another fundamental plain language principle is to make sure that readers can connect the dots between the subject of a sentence and what’s being said about it. In good writing, these connections are easy to spot. In bad writing, the connections break down, typically because long modifiers obscure the connection. In this State Bar rule, for instance, “the active member” subject is separated from its predicate by 53 words: “An active member who provides the State Bar with his or her most recent federal tax return Form 1040, 1040A, 1040EZ, or some other form of acceptable documentation, including but not limited to a declaration under penalty of perjury, demonstrating total gross annual individual income from all sources of less than forty thousand dollars (\$ 40,000) shall presumptively qualify for a waiver of 25 percent (25%) of the annual membership fee.”

Update usage

The word “shall” is a prime illustration of a word traditionally used in legal drafting but now banished in recent revisions of state and federal rules. “Shall” has been exiled because it can express obligation, permission, or preference and because it is often used for present as well as future. A prefatory memorandum to proposed changes in Judicial Council rules notes that “must” is mandatory, “may” is permissive, and “should” expresses a preference or a non-binding recommendation.” Adhering to this usage would require replacement of “shall have” in this State Bar rule: “Any member whose scaling request is denied by the secretary or designee, shall have the right to request review of that denial by the Membership Oversight Committee of the Board

(or any successor committee) or its designee.” Is the right a present or a future one? State Bar rules are replete not only with “shalls” but with “here- and there- words” and other outdated usages. Eliminating them will make the rules sound less Dickensian and more contemporary.

Delete anachronisms

Rule revision affords an opportunity to eliminate anachronisms. An egregious example is this: “On February 2, 1928 a penalty of \$3 was due from all unregistered and un-enrolled persons who were eligible to membership on November 18, 1927, who failed to register and pay the organization fee and penalty thereon and the annual fees of an active member due January 1, 1928.” As rules are rewritten, historical oddities like this will be deleted.

Compile fees and deadlines in a schedule

Rather than reference specific fees and deadlines, the revised rules will reference a schedule that can be updated annually in one pass. This procedure will streamline the revision process. It will also eliminate obviously outdated references, such as this rule’s reference to 50 cents: “The Board of Governors shall each year fix the annual membership fee for active and inactive members. The sum of 50 cents, or other sum as the board may designate for any particular calendar year, of each active and inactive fee is allocated as the annual subscription of each member to the official publications of the State Bar.”

Offload procedures

A rule occasionally recites operational procedures that may be important internally but are irrelevant to its audience. The table below illustrates how elimination of operational procedures will simplify a rule. If the procedures are important, they can either be moved to an internal operations manual or to a mandatory form.

Current rule	Revised rule
Upon the expiration of a period of not less than two months after the date of mailing the notice provided by section 6143 of the Business and Professions Code, the secretary or designee shall deliver to the Board of Governors a list of all members who have failed to make any required payments of membership fees, penalties, or costs, with proof of the mailing of the notice to them. The Board of Governors shall make a recommendation for the suspension of such delinquent members, and a certified copy of recommendation shall thereupon be filed with the Clerk of the Supreme Court. Written notice of such suspension shall be given to a member at his or her last address appearing upon the records of the State Bar. However, it is the duty of every member of the State Bar to keep informed relative to the payment of dues and any order of suspension for nonpayment thereof and failure to give such notice shall not affect the operation of such suspension.	A member who fails to pay annual membership fees or any outstanding penalties or costs will be sent a final delinquency notice at the member's address of record. If the State Bar fails to receive full payment of the amount due within two months of sending the final delinquency notice, the State Bar will recommend that the Supreme Court suspend the member from the practice of law.

The revised rule above is 67 words versus 169 words, a reduction of about 60%.

As indicated above, procedures essential to compliance can be offloaded from the rule to a mandatory form. Doing so communicates the gist of the rule without weighting it down with procedural detail needed only by those who must comply with the rule. In effect, the mandatory form becomes a procedural checklist for compliance.

Current rule	Revised rule
<p>To change the member name and or address maintained the State Bar or to request a replacement bar card or wall certificate, a member must make a written request and provide proof of identity to the State Bar of California in a manner acceptable to the State Bar of California.</p> <p>Acceptable Name Change Documents</p> <p>To establish proof of identity a member shall provide a photocopy of at least two documents in the Old name and two documents in the New name, one of which may be the member's bar card. Other acceptable documents include:</p> <ul style="list-style-type: none">(A) Driver's license, or other record maintained by the Department of Motor Vehicles;(B) Passport;(C) Marriage certificate;(D) Copy of a court order, adoption certificate;(E) Military identification card.	<p>A member must inform the State Bar of a change of name no later than 30 days after making the change. The member must report the change using State Bar Form X (see www.calbar.ca.gov/namechange).</p>

Conclusion

By generating calls, e-mails, and letters, unclear rules take up staff time that could be used more productively. By confusing and irritating members and the public, they undermine our efforts to improve programs and services. Launching the rules revision project with a comprehensive rules structure and clear rules on members' rights and responsibilities will remedy these problems. It will also align the bar with the efforts of the state and federal judiciaries to apply plain language principles to court rules, jury instructions, and forms.

TITLE 2. RIGHTS AND RESPONSIBILITIES OF MEMBERS
Division 4. Minimum Continuing Legal Education

Chapter 1 Purpose and scope

- Rule 2.50 Purpose of CLE
- Rule 2.51 Definitions
- Rule 2.52 Standards
- Rule 2.53 New members
- Rule 2.54 Exemptions
- Rule 2.55 Modifications

Chapter 2. Compliance

- Rule 2.70 Compliance groups
- Rule 2.71 Compliance periods
- Rule 2.72 Requirements
- Rule 2.73 Record of MCLE

Chapter 3. Activities approved for CLE credit

- Rule 2.80 Attending programs and classes
- Rule 2.81 Speaking
- Rule 2.82 Teaching
- Rule 2.83 Self-study
- Rule 2.84 Member credit requests
- Rule 2.85 Education in an approved jurisdiction
- Rule 2.86 Bar examinations and MPRE

Chapter 4. Noncompliance

- Rule 2.90 Definition
- Rule 2.91 Notice of noncompliance
- Rule 2.92 Enrollment as inactive for CLE noncompliance
- Rule 2.93 Reinstatement following CLE noncompliance

Chapter 1 Purpose and scope

Rule 2.50 Purpose of CLE

Rules for Continuing Legal Education (CLE) are intended to protect the public by requiring ongoing legal education for active members of the State Bar of California. A member's involuntary enrollment as inactive for failing to comply with these rules is public information available on the State Bar Web site.

Rule 2.51 Definitions

- (A) An "activity" is CLE that the State Bar approves as meeting standards for CLE credit.
- (B) A "provider" is an individual or entity approved by the State Bar to grant CLE credit for an educational activity.
- (C) "CLE credit" is the number of credit hours that a member may claim to meet the requirements of these rules.
- (D) A "credit hour" is sixty minutes spent in an educational activity, less any time for breaks or other activities that lack educational content. A credit hour is reported to the nearest quarter hour in decimals.

Rule 2.52 Standards

To be approved for CLE credit, an educational activity must meet State Bar standards.

- (A) The activity must relate to legal subjects directly relevant to members of the State Bar and have significant current professional content.
- (B) The presenter of the activity must have significant professional or academic experience related to its content.
- (C) Promotional material must state that the activity is approved for CLE credit or that a request for approval is pending; specify the amount of credit offered; and indicate whether any of the credit may be claimed for required CLE in legal ethics, elimination of bias, or the prevention, detection, and treatment of substance abuse or mental illness that impairs professional competence.
- (D) If the activity lasts more than an hour, the provider must make substantive written materials available either before or during the activity. The provider must also make the materials available for at least 30 calendar days following the activity.

- (E) Programs and classes must be scheduled so that participants are free of interruptions.
- (F) Completion of an activity must be verified by the CLE provider or, for self-study, by the member.

Rule 2.53 New members

- (A) A new member is permanently assigned to a compliance group on the date of admission.
- (B) The initial compliance period for a new member begins on the first day of the month in which the member was admitted. It ends when the period ends for the compliance group. If the initial period is less than the period for the compliance group, the required credit hours may be reduced as provided in these rules.¹
- (C) A new member may not claim credit for education taken before the initial compliance period.

Rule 2.54 Exemptions

- (A) The following active members are exempt from CLE requirements, provided they claim the exemption in their assigned compliance periods using My State Bar Profile online or an MCLE Compliance Form:
 - (1) officers and elected officials of the State of California;
 - (2) full-time professors at law schools accredited by the State Bar of California or the American Bar Association;
 - (3) those employed full-time by the State of California as attorneys or administrative law judges on a permanent or probationary basis, regardless of their working hours, who do not otherwise practice law; and
 - (4) those employed full-time by the United States government as attorneys or administrative law judges on a permanent or probationary basis, regardless of their working hours, who do not otherwise practice law.
- (B) Members whom this rule exempts by reason of their employment with the State of California or the United States government may provide pro

¹ See Rule 2.72 (C).

bono legal services through a qualified legal services project or a qualified support center.²

Rule 2.55 Modifications

A member prevented from fulfilling the CLE requirement for a substantial part of a compliance period because of a physical or mental condition, natural disaster, family emergency, or financial hardship may apply for modification of CLE compliance requirements. The State Bar must approve any modification.

Chapter 2. Compliance

Rule 2.70 Compliance groups

A member is permanently assigned to one of three compliance groups on the basis of the first letter of the member's last name at the date of admission.³ The three groups are A-G, H-M, and N-Z. The member remains in the compliance group despite any subsequent change of last name.

Rule 2.71 Compliance periods

A compliance period consists of 36 months. It begins on the first day of February and ends three years later on the last day of January. The three compliance groups begin and end their compliance periods in different years. A member must report Minimum CLE compliance no later than the day following the end of the compliance period. The report must be made online using My State Bar Profile or with an MCLE Compliance Form. Fees for noncompliance are set forth in the Schedule of Charges and Deadlines.

Rule 2.72 Requirements

- (A) Unless these rules indicate otherwise, a member who has been active throughout a 36-month compliance period must complete 25 credit hours of State Bar approved education. No more than 12.5 credit hours may be self-study.⁴ Total hours must include:

- (1) at least four hours of ethics in the legal profession;

² Business & Professions Code § 6213.

³ A historical exception exists. When the CLE program was established in 1992, members were permanently assigned to compliance groups on the basis of their last names at the time, regardless of any different last names they might have used previously.

⁴ See Rule 2.83.

- (2) at least one hour dealing with the elimination of bias in the legal profession by reason of sex, color, race, religion, ancestry, national origin, physical disability, age, or sexual orientation; and
 - (3) at least one hour of education designed to prevent, detect, and treat substance abuse or mental illness that impairs professional competence.
- (B) Required education in legal ethics, elimination of bias, or the prevention, detection, and treatment of substance abuse or mental illness that impairs professional competence may be a component of an approved educational activity that deals with another topic.
- (C) A member may reduce the required 25 hours in proportion to the number of full months the member was inactive or exempt in the 36-month compliance period. Up to half the reduced hours may be self-study.⁵ A tool for applying this formula is available at the State Bar Web site.
- (D) Excess credit hours may not be applied to the next compliance period.⁶

Rule 2.73 Record of MCLE

For a year after reporting CLE compliance, a member must retain and provide upon demand and to the satisfaction of the State Bar

- (A) a provider's certificate of attendance;
- (B) a record of self-study that includes the title, provider, credit hours, and date of each activity; or
- (C) proof of exempt status.

Chapter 3 Activities approved for CLE credit

Rule 2.80 Attending programs and classes

A member may claim CLE credit for attending a CLE activity, such as a lecture, panel discussion, or law school class, in person or by technological means.

Rule 2.81 Speaking

⁵ See Rule 2.83.

⁶ But see Rule 2.93.

A member may claim CLE credit for speaking at an approved educational activity.

- (A) A principal speaker, who is responsible for preparing and delivering a program or class and its related materials, may claim
 - (1) actual speaking time multiplied by four for the first presentation; or
 - (2) actual speaking time only for each time a presentation is repeated without significant change.
- (B) A panelist may claim
 - (1) either of the following for the first panel presentation:
 - (a) scheduled speaking time multiplied by four, plus the actual time spent in attendance at the remainder of the presentation; or
 - (b) when times have not been scheduled for individual speakers, an equal share of the total time for all speakers multiplied by four plus the actual time spent in attendance at the remainder of the presentation.
 - (2) actual speaking time only for each time a presentation is repeated without significant change.
- (C) A member who introduces speakers or serves as a moderator may claim only the CLE credit available to any attendee.

Rule 2.82 Teaching

A member may claim CLE credit for teaching a law school course.

- (A) A member assigned to teach a course may claim no more than the credit hours granted by the law school multiplied by twelve or actual speaking time for required CLE in legal ethics, elimination of bias, or the prevention, detection, and treatment of substance abuse or mental illness that impairs professional competence.
- (B) A guest lecturer or substitute teacher may claim
 - (1) actual speaking time multiplied by four for the first presentation; or

- (2) actual speaking time only for each time a presentation is repeated without significant change.

Rule 2.83 Self-study

A member may claim up to half the credit hours required in a compliance period for

- (A) watching or listening to activities for which attendance is not verified by a provider;
- (B) taking an open- or closed-book self-test and submitting it to a provider who returns it with a grade and explanations of correct answers; or
- (C) authoring or co-authoring written materials that
 - (1) have contributed to the member's legal education;
 - (2) have been published or accepted for publication; and
 - (3) were not prepared in the ordinary course of employment or in connection with an oral presentation at an approved educational activity.

Rule 2.84 Member credit request

A member may apply for credit for an activity directly relevant to the member's practice but not otherwise approved if the activity substantially meets State Bar standards. The application must be submitted with the appropriate fee.

Rule 2.85 Education in an approved jurisdiction

As provided in these rules,⁷ a member may claim CLE credit for educational activities in an approved jurisdiction.

Rule 2.86 Bar examinations and MPRE

A member may not claim CLE credit for preparing for or taking a bar examination or the Multistate Professional Responsibility Examination (MPRE).

Chapter 4. Noncompliance

Rule 2.90 Definition

⁷ See Rules 3.530 – 3.533 on approved jurisdictions (Title 3, Division 5, Chapter 1, Article 3).

Noncompliance is failure to

- (A) complete the required education during the compliance period or an extension of it;
- (B) report compliance or claim exemption from CLE requirements;
- (C) keep a record of MCLE compliance⁸; or
- (D) pay fees for noncompliance.

Rule 2.91 Notice of noncompliance

- (A) A member who is sent a notice of noncompliance must comply with its terms or be involuntarily enrolled as inactive. An inactive member is not eligible to practice law.
- (B) If the notice requires the member to complete credit hours for the previous compliance period, any excess credit hours may be counted toward the current compliance period.

Rule 2.92 Enrollment as inactive for CLE noncompliance

A member who fails to comply with a notice of noncompliance is enrolled as inactive and is not eligible to practice law. The enrollment is administrative and no hearing is required.

Rule 2.93 Reinstatement following CLE noncompliance

Enrollment as inactive for CLE noncompliance terminates when a member submits proof of compliance and pays noncompliance fees. Credit hours that exceed those required for compliance may be counted toward the current period.

⁸ See Rule 2.73.

TITLE 3. PROGRAMS AND SERVICES

Division 1. Prospective Members

Division 2. Attorney Members

Division 3. Other Attorneys

Division 4. Consumers

Division 5. Vendors of Programs and Services

Chapter 1. Providers of Continuing Legal Education

Article 1. Global provisions

Rule 3.500 Definitions

Rule 3.501 Standards

Rule 3.502 Responsibilities of every provider

Rule 3.503 Suspension or revocation of provider approval

Article 2. Multiple Activity Providers

Rule 3.520 Applying for Multiple Activity Provider status

Rule 3.521 Renewing Multiple Activity Provider status

Article 3. Approved jurisdictions

Rule 3.530 Definition

Rule 3.531 Physical presence required for CLE in an approved jurisdiction

Rule 3.532 Claiming credit for CLE in an approved jurisdiction

Rule 3.533 Proof of CLE in an approved jurisdiction

Chapter 1. Providers of Continuing Legal Education

Article 1. Global provisions

Rule 3.500 Definitions

- (A) An “activity” is CLE that the State Bar approves as meeting standards for CLE credit.
- (B) A “provider” is an individual or entity approved by the State Bar to grant CLE credit for an educational activity.
- (C) A “Single Activity Provider” is approved to grant credit for a single CLE activity.
- (D) A “Multiple Activity Provider” is approved to grant credit for any CLE activity that complies with the terms of the Multiple Activity Provider Agreement.¹
- (E) “CLE credit” is the number of credit hours that a member may claim to meet the requirements of these rules
- (F) A “credit hour” is sixty minutes spent in an educational activity, less any time for breaks or other activities that lack educational content. A credit hour is reported to the nearest quarter hour in decimals. CLE credit includes time for introductory and concluding remarks and for questions and answers.

Rule 3.501 Standards

To be approved for CLE credit, an educational activity must meet State Bar standards.

- (A) The activity must relate to legal subjects directly relevant to members of the State Bar and have significant current professional content.
- (B) The provider must have significant professional or academic experience related to its content.
- (C) Promotional material must state that the activity is approved for CLE credit or that a request for approval is pending; specify the amount of credit offered; and indicate whether any of the credit may be claimed for required CLE in legal ethics, elimination of bias, or the prevention,

¹ Business & Professions Code § 6070 (b) provides that programs offered by the California District Attorneys Association and the California Public Defenders Association are deemed to be approved CLE.

detection, and treatment of substance abuse or mental illness that impairs professional competence.²

- (D) If the activity lasts more than an hour, the provider must make substantive written materials available either before or during the activity. The provider must also make the materials available for at least 30 calendar days following the activity.
- (E) Programs and classes must be scheduled so that participants are free of interruptions.
- (F) Completion of an activity must be verified by the CLE provider or, for self-study, by the member.

Rule 3.502 Responsibilities of every provider

Every provider must

- (A) submit an application for approval of an activity in accordance with State Bar procedures and pay the appropriate processing fee;
- (B) comply with any State Bar rules and terms applicable to an approved activity;
- (C) retain the Record of Attendance for an activity for four years from the date of the activity and submit it to the State Bar upon request;
- (D) furnish a CLE Certificate of Attendance to each attendee who has met the requirements for the activity;
- (E) give each attendee who completes an activity a State Bar CLE Activity Evaluation Form or its equivalent; retain the completed form for at least one year; and submit it to the State Bar upon request;
- (F) permit State Bar auditors to attend or otherwise audit an activity at no cost; and
- (G) notify the State Bar in writing of any change in the name, address, or other contact information required by the State Bar.

Rule 3.503 Suspension or revocation of provider approval

² Business & Professions Code § 6070 (b) provides that programs offered by the California District Attorneys Association and the California Public Defenders Association are deemed to be approved CLE.

The State Bar may suspend or revoke a provider's approval at any time for failure to comply with these rules or the terms of any applicable State Bar agreement.

Article 2. Multiple Activity Providers

Rule 3.520 Applying for Multiple Activity Provider status

To be considered for Multiple Activity Provider status, a provider must

- (A) within a two-year period receive State Bar approval for four different CLE activities and hold them on four different dates;
- (B) submit an application and processing fee for Multiple Activity Provider status within that same period.

Rule 3.521 Renewing Multiple Activity Provider status

To be considered for renewal of up to three years, a Multiple Activity Provider must

- (A) apply for renewal using the State Bar form for Multiple Activity Provider Renewal;
- (B) submit the completed form and any required documentation by the deadline set by the State Bar; and
- (C) pay the appropriate fees.

Article 3. Approved jurisdictions

Rule 3.530 Definition

An "approved jurisdiction" is recognized by the State Bar as having CLE requirements that substantially meet State Bar standards for educational activities and computing CLE credit hours in a manner acceptable to the State Bar. Approved jurisdictions are listed on the State Bar Web site.

Rule 3.531 Physical presence required for CLE in an approved jurisdiction

An activity in an approved jurisdiction qualifies for CLE credit in California if the member attends or does the activity outside California. A member may not claim credit for such an activity, including self-study, when physically present in California unless the State Bar has specifically approved it.

Rule 3.532 Claiming credit for CLE in an approved jurisdiction

A member who qualifies for CLE credit offered by an approved jurisdiction may claim the amount of credit authorized by the jurisdiction. No special procedure is required to claim the credit.

Rule 3.533 Proof of CLE in an approved jurisdiction

A member who claims credit for CLE in an approved jurisdiction must retain a certificate of attendance or other proof of completing the activity for at least four years and submit it to the State Bar upon request.

MCLE RULES AND REGULATIONS

(adopted by Board of Governors 12/8/90; last revised 5/17/03)

1.0 PURPOSE

Continuing legal education is required of all members of the State Bar of California on active status not specifically exempted from this requirement to assure that, throughout their careers, California attorneys remain current regarding the law, the obligations and standards of the profession, and the management of their practices.

2.0 MINIMUM CONTINUING LEGAL EDUCATION REQUIREMENT

2.1 REQUIREMENT

All members of the State Bar of California on active status shall demonstrate their compliance with the continuing legal education requirement at the end of each compliance period and, except as otherwise provided, shall complete at least 25 hours of approved continuing legal education activities every 36 months. Of the 25 hours:

2.1.1 At least four shall be in the area of legal ethics ;

2.1.2 At least one shall relate to prevention, detection, and treatment of substance abuse; and

2.1.3 At least one shall relate to elimination of bias in the legal profession based on any of, but not limited to the following characteristics: sex, color, race, religion, ancestry, national origin, blindness or other physical disability, age, and sexual orientation.

Instruction in legal ethics, prevention, detection, and treatment of substance abuse and emotional distress, and elimination of bias may be a portion of a substantive law education activity.

2.2 PROPORTIONAL REQUIREMENT

New admittees, members who are on inactive status for a portion of a compliance period, and members who are exempt pursuant to section 6.0 for a portion of a compliance period, must comply with a proportional continuing legal education requirement.

2.2.1 Where the member is on active status and not exempt for four months or less in a compliance period, the member is not required to comply with the education requirement for that compliance period.

2.2.2 Where the member is on active status and not exempt for more than four months in a compliance period, the member shall be required to complete a total number of hours of approved continuing education activities and, within those total hours, a number of hours of education in legal ethics in proportion to the number of months in the compliance period that the member was on active status and not exempt from the requirement. Fractions of hours shall be rounded up to the next whole number.

Formula for calculating total hours required: [(Number of months on active status and not exempt) x 25] + 36 = Total Hours Required

Example: 15 months on active status and not exempt x 25 = 375 + 36 = 11 total hours required (10.42 rounded up to the next whole number).

Formula for calculating required hours of legal ethics, within the total hours required: [(Number of

months on active status and not exempt) x 4] + 36 = Total Hours Required in Legal Ethics

Example: 15 months on active status and not exempt x 4 = 60 + 36 = 2 hours of legal ethics required (1.67 rounded up to the next whole number).

The following table shows the results of applying these formulas:

Months on active status and not exempt	Total Hours Required	Hours of Legal Ethics
1-4	0	0
5	4	1
6-7	5	
8	6	
9	7	
10	7	2
11	8	
12	9	
13-14	10	
15	11	
16-17	12	
18	13	
19-20	14	3
21	15	
22-23	16	
24	17	
25	18	
26-27	19	
28	20	4
29-30	21	
31	22	
32-33	23	
34	24	
35	25	

2.2.3 Members completing a proportional requirement shall not be required to complete one hour of approved continuing legal education relating to prevention, detection, and treatment of substance abuse or elimination of bias in the legal profession

MCLE RULES AND REGULATIONS

(adopted by Board of Governors 12/8/90; last revised 5/17/03)

2.2.4 Members on inactive status or exempt for a portion of a compliance period may claim credit for education activities taken at any time during the compliance period for which the education is required.

2.3 AMOUNT OF SELF-STUDY

Up to but not more than 12.5 hours credit may be claimed for self-study activities during any compliance period. In the case of a proportional requirement pursuant to section 2.2, up to but not more than one-half of the required hours may be claimed for self-study activities during any compliance period.

2.4 NO CARRY FORWARD OF CREDIT

Credit for participating in an education activity may not be carried forward from one compliance period to another.

3.0 COMPLIANCE PERIODS AND COMPLIANCE GROUPS

3.1 COMPLIANCE GROUPS

Members shall be permanently assigned to a Compliance Group based on the first initial of the member's last name on February 1, 1992 or date of admittance, whichever comes later. Compliance Group 1 shall include members whose last names begin with A-G. Compliance Group 2 shall include members whose last names begin with H-M. Compliance Group 3 shall include members whose last names begin with N-Z. Subsequent name changes shall not change the Compliance Group assignment.

3.2 COMPLIANCE PERIODS

After the initial compliance period, all compliance periods shall be 36 months in length. Initial and subsequent compliance periods for each Compliance Group are charted below:

Compliance Group	Initial compliance period	Subsequent compliance periods
Group 1 (last names A-G)	2/1/92 through 1/31/95	2/1/95 through 1/31/98 2/1/98 through 1/31/01 2/1/01 through 1/31/04 and every 36 months thereafter
Group 2 (last names H-M)	2/1/92 through 1/31/94	2/1/94 through 1/31/97 2/1/97 through 1/31/00 2/1/00 through 1/31/03 and every 36 months thereafter
Group 3 (last names N-Z)	2/1/92 through 1/31/93	2/1/93 through 1/31/96 2/1/96 through 1/31/99 2/1/99 through 1/31/02 and every 36 months thereafter

3.3 NEW ADMITTEES

3.3.1 New admittees shall be permanently assigned to the appropriate Compliance Group based on the first initial of their last name on the date of admittance. The initial compliance period after admittance shall begin on the first day of the month of admittance and shall end on the same day as for all other members of the same Compliance Group.

3.3.2 Such members must comply with a proportional continuing legal education requirement for the initial compliance period as set forth in section 2.2.

3.3.3 Such members may claim credit only for education activities which are taken on or after the first day of the month in which the member is admitted to the bar.

4.0 CATEGORIES OF CREDIT

4.1 PARTICIPATORY CREDIT

Participatory credit refers to participation in an education activity that can be verified by the education provider and may be claimed for:

4.1.1 Attending approved education activities, including lectures, panel discussions, question-and-answer periods, or in-house education;

4.1.2 Viewing videotapes or film instruction, listening to audiotapes, or viewing or participating in other audiovisual activities, including interactive video instruction and activities electronically transmitted from another location, such as online education. The viewing, listening, or participating must be approved, and must be verified by the provider (for purposes of this section, sponsorship requires the approved provider to ensure compliance with sections 7.1 and 7.2);

4.1.3 Speaking in approved education activities;

4.1.4 Attending a law school class after the member's admission to practice in California, provided the member officially registers for the class and satisfactorily completes the class (by audit or grade), as required by the law school; or

4.1.5 Teaching a class at a law school.

4.2 SELF-STUDY CREDIT

Self-study credit refers to self-verified participation in an education activity. Up to but not more than 12.5 hours of self-study credit, or in the case of a proportional requirement, up to but not more than one-half of the required hours, may be claimed per compliance period for:

4.2.1 Viewing approved videotapes or videotapes of approved activities or viewing or participating in other approved audiovisual activities, including interactive video instruction and activities electronically transmitted from another location, such as online education;

4.2.2 Listening to approved audiotapes or audiotapes of approved activities;

4.2.3 Preparing, as an author or co-author, written materials published or accepted for publication, e.g., in the form of an article, chapter, or book, which contribute to the legal education of the author member (which were not prepared in the ordinary course of the member's practice or employment or to accompany speaking in an approved education activity); or

4.2.4 Participating in self-assessment testing (open-book tests that are completed by the member, submitted to the provider, graded, and returned to the member with the correct answers and an explanation of why the answer chosen by the provider is the correct answer).

MCLE RULES AND REGULATIONS

(adopted by Board of Governors 12/8/90; last revised 5/17/03)

4.3 BAR EXAMINATION PREPARATION

No credit shall be given for activities directed primarily to preparation for an examination for admission to practice law in any state, the District of Columbia, any territory of the United States or any foreign jurisdiction, including the Multi-state Professional Responsibility Examination. No credit shall be given for the time spent actually taking such an examination.

5.0 COMPUTATION OF CREDIT HOURS

5.1 FORMULA FOR COMPUTATION

Credit hours are computed based on actual time spent in an activity (actual instruction or speaking time, actual time spent viewing videotapes or listening to audiotapes, actual time spent preparing materials for publication, actual time spent attending a law school class) in hours to the nearest one-quarter hour reported in decimals.

Formula:
$$\frac{\text{Minutes of Instruction (time spent in activity)}}{60} = \text{Credit Hours}$$

For example, an activity that lasts three hours and has one 10-minute break would be calculated as follows:

$3 \text{ hrs} \times 60 \text{ mins/hr} = 180 \text{ mins}$ minus the 10-min break = 170 mins divided by 60 = 2.833 hrs, which would round down to 2.75.

Providers are expected to compute credit hours for approved activities based on this formula and to announce the approved number of hours.

5.2 CREDIT FOR SELF-ASSESSMENT TESTS

For self-assessment tests, providers must specify the maximum credit allowable. Credit may be offered only for the time actually spent answering the self-assessment test questions and reviewing the results from the provider.

5.3 CREDIT FOR SPEAKERS

5.3.1 Credit hours for speaking in an approved education activity are computed by multiplying actual speaking time by four. For repeat presentations, speakers may claim only actual speaking time. Each presentation of a workshop or skills training activity (an education activity that includes the active participation of attendees in the form of interactive exercises, simulations, and demonstrations and therefore must be modified for the attendees at each presentation) will count as a separate education activity.

5.3.2 Credit hours for panelists at an approved education activity are computed by multiplying the length of time the panelist is assigned to speak by four. If specific speaking times are not assigned to the panelists, "the length of time the panelist is assigned to speak" means the actual length of the education activity divided by the number of panelists. For the remainder of the panel and for repeat presentations, panelists may claim only actual attendance time.

For example, a two-hour panel with four panelists who are not assigned specific speaking times would be calculated as follows:

1. To determine each panelist's speaking time, divide the length of the panel by the number of panelists (in this case, $2 \text{ hrs} \times 60 \text{ min/hr} = 120 \text{ mins}$ divided by 4 panelists = 30 mins or .5 hrs of speaking time).

2. Multiply the panelist's speaking time $\times 4$ ($.5 \times 4 = 2 \text{ hrs}$).

3. For the remainder of the panel (1.5 hrs), credit the panelist with actual attendance time only. Do NOT count the panelist's speaking time twice, i.e., as part of the attendance time.

4. Each panelist should receive 3.5 hrs (2 hrs of speaking credit plus 1.5 hrs of attendance).

5.3.3 A moderator who either introduces other speakers or performs in an administrative capacity and does not present material having significant current intellectual or practical content for members may claim the same credit hours as attendees.

5.4 CREDIT FOR TEACHING A LAW SCHOOL CLASS

5.4.1 Credit hours for teaching a law school class are computed by multiplying the number of credit hours/units granted by the law school by 12. If a portion of a law school class is devoted to a subject set forth in section 2.1, credit hours for teaching that subject are computed by multiplying actual speaking time by one. In no case may the credit hours claimed for teaching a law school class exceed credit hours/units multiplied by 12.

5.4.2 Credit hours for a guest lecturer or substitute teacher in a law school class are computed by multiplying actual speaking time by four. For repeat presentations, credit may be claimed only for actual speaking time.

6.0 SPECIAL CASES AND EXEMPTIONS

6.1 PRESCRIBED EXEMPTIONS

In accordance with Business and Professions Code section 6070 and California Rule of Court 958, the following are exempt from the continuing legal education requirement:

6.1.1 Officers and elected officials of the State of California;

6.1.2 Full-time professors at law schools accredited by the State Bar, the ABA, or both;

6.1.3 Full-time employees of the State of California acting within the scope of their employment. For purposes of this section, "full-time employees of the State of California acting within the scope of their employment" shall refer to members employed by the State of California as attorneys or Administrative Law Judges on a permanent or probationary basis, regardless of their working hours, who do not practice law in California except as employees of the State of California; and

6.1.4 Full-time employees of the United States Government, its departments, agencies, and public corporations, acting within the scope of their employment. For purposes of this subparagraph, "full-time employees of the United States Government, its departments, agencies, and public corporations, acting within the scope of their employment" shall refer to members employed by the United States Government, its departments, agencies, and public corporations, as attorneys or Administrative Law Judges on a permanent or probationary basis, regardless of their working hours, who do not practice law except as employees of the United States Government, its departments, agencies, and public corporations.

MCLE RULES AND REGULATIONS

(adopted by Board of Governors 12/8/90; last revised 5/17/03)

6.1.5 Effective February 1, 1997, members otherwise exempt from the continuing legal education requirement pursuant to sections 6.1.3 and 6.1.4 may provide pro bono legal services through a qualified legal services project or support center receiving funds pursuant to Business and Professions Code section 6210, et seq., provided that the sponsor of the pro bono project or support center ensures that members volunteering pursuant to this section have received the necessary training or otherwise possess the necessary skills to provide quality service and maintain professional standards.

6.2 GOOD CAUSE EXEMPTION FROM OR MODIFICATION OF REQUIREMENT

A member may submit an application setting forth good cause for an exemption from compliance with or modification of any of the requirements, including an extension of time for compliance, in accordance with a procedure established by the State Bar.

6.2.1 Should the decision be adverse to the member, the member may appeal such decision pursuant to the provisions of California Rule of Court 952(d).

6.3 AFFIRMATIVE SHOWING OF EXEMPTION FROM OR MODIFICATION OF THE REQUIREMENT

Members claiming exemption from or modification of the minimum continuing legal education requirement shall provide an affirmative showing and/or furnish such substantiation of their exempt status or modification of the requirement as the State Bar may require.

7.0 STANDARDS FOR APPROVAL OF EDUCATION ACTIVITIES

Continuing legal education activities may be granted approval in three ways; 1) the provider of the activity is an approved provider and certifies that the activity meets the criteria of section 7.1, 2) the provider of an individual activity receives approval of that activity, or 3) a member receives approval of an activity which is not otherwise approved.

7.1 STANDARDS FOR ALL EDUCATION ACTIVITIES

All continuing legal education activities must meet the following standards:

7.1.1 The activity shall have significant current intellectual or practical content for members;

7.1.2 The activity shall be an organized program of learning related to legal subjects and the legal profession, except that education activities relating to the prevention, detection and treatment of substance abuse may address generic issues of substance abuse in society in general and need not focus solely on problems which attorneys encounter in the legal profession. Cross profession activities must be directly relevant to the practice of law;

7.1.3 The activity shall be conducted by an individual or group qualified by practical or academic experience;

7.1.4 Where the activity is more than one hour in length, substantive written materials must be distributed to all participants. Such materials must be distributed at or before the time the activity is offered. When a self-study activity is more than one hour in length, the participants must have the use of the substantive written materials while viewing or listening to the videotape or audiotape and reasonable access to the written materials thereafter, but participants are not required to retain a personal copy of the materials; and

7.1.5 In addition to the foregoing, in-house education activities must be scheduled at a time and location so as to be free of interruptions from telephone calls and other office matters.

7.2 REQUIREMENTS FOR ALL PROVIDERS

All approved providers and providers of approved continuing legal education activities shall agree to the following:

7.2.1 An official record verifying all members' attendance at the activity shall be maintained by the provider for at least four years after the completion date. The provider shall include the member on the official record of attendance only if the member's signature or other verifiable proof of attendance was obtained at the time of attendance at the activity. The official record of attendance shall be provided to the State Bar upon request at no cost to the State Bar. It is not the intent of the State Bar that a provider's failure to comply with this record-keeping requirement give rise to a lawsuit by a member against the provider;

7.2.2 The official record of attendance shall state the name and bar number of the members, the time, date, location, title, and the amount of California approved education credit offered for the education activity, including a breakdown of credit offered for the subjects set forth in section 2.1.1, 2.1.2, and 2.1.3 based on the formulas set forth in section 5.0;

7.2.3 Providers shall provide a certificate of attendance to all members attending continuing legal education activities sponsored by the provider. The certificate of attendance shall state the time, date, location, title, and the amount of California approved education credit offered for the education activity or activities, including a breakdown of credit offered for the subjects set forth in section 2.1.1, 2.1.2, and 2.1.3 based on the formulas set forth in section 5.0;

7.2.4 Providers approved under section 9.0 shall include a statement in any materials promoting their approved provider status or one or more individual activities, certifying that the provider is a State Bar of California approved MCLE provider. If an application for approved provider status pursuant to section 9.0 is pending before the State Bar and the promotional materials refer to California MCLE credit, the statement shall indicate that an application is pending.

Examples: "[Provider] is a State Bar of California approved MCLE provider" or "[Provider] certifies that an application is pending for approval as a State Bar of California approved MCLE provider."

7.2.5 Providers sponsoring individual activities approved under section 8.0 shall include a statement in any promotional materials for one or more individual activities, certifying that the activity or activities have been approved for MCLE credit by the State Bar of California. If an application for approval of an individual activity pursuant to section 8.0 is pending before the State Bar, and the promotional materials refer to California MCLE credit, the statement shall indicate that an application is pending.

Examples: "[Provider] certifies that this activity has been approved for MCLE credit by the State Bar of California" or "[Provider] certifies that an application is pending for approval of this activity for MCLE credit by the State Bar of California."

7.2.6 Providers shall provide to all participants in an activity being offered for California MCLE credit, in advance of the activity, accurate information as to the amount of approved

MCLE RULES AND REGULATIONS

(adopted by Board of Governors 12/8/90; last revised 5/17/03)

education credit being offered based on the formulas set forth in section 5.0, including a breakdown of credit offered, if any, for the subjects set forth in sections 2.1.1, 2.1.2 and 2.1.3.

7.2.7 Providers shall agree to the monitoring of their compliance with sections 7.1 and 7.2 at no cost to the State Bar including, but not limited to, allowing in-person observation of all approved continuing legal education activities by members of the State Bar Board of Governors, or designees of the Board, and the State Bar staff; and

7.2.8 Providers shall make available to each participant a copy of the State Bar approved Education Activity Evaluation Form or other evaluation form, provided that such other form solicits at least the same information solicited in the State Bar approved form. Providers shall maintain the completed Education Activity Evaluation Forms for a period of not less than one year after the activity and shall provide the completed evaluation forms to the State Bar upon request at no cost to the State Bar.

7.2.9 Providers shall notify the State Bar in writing of any change in the name, address or telephone number of the provider or of the individual designated by the provider as its contact person.

7.3 ACTIVITIES APPROVED FOR LEGAL SPECIALIZATION CREDIT

Education activities approved for certification and/or recertification credit by the California Board of Legal Specialization shall be counted towards the education requirement to the same extent as approved for legal specialization credit so long as the provider agrees to comply with the requirements of section 7.2.

7.4 ACTIVITIES APPROVED FOR CREDIT BY OTHER JURISDICTIONS

A member who participates in an education activity outside of California that is listed in section 4.0 may count that activity toward his or her compliance with the California education requirements without seeking California approval for the activity, provided that the activity is approved for continuing legal education credit by another state, the District of Columbia, any territory of the United States or any foreign jurisdiction which has MCLE requirements meeting standards adopted by the State Bar. The member may claim credit for the activity to the same extent as in the approving jurisdiction.

If the activity is not approved by another jurisdiction, the member may seek credit for the activity under section 10.0.

7.5 REQUIREMENTS OF CO-SPONSORS

Where an education activity is co-sponsored and has not been approved pursuant to section 8.0, the activity may be claimed for credit only if at least one of the sponsors is a State Bar approved provider. Where only one of the co-sponsors is a State Bar approved provider, the State Bar approved provider shall ensure compliance with the requirements of sections 7.1 and 7.2. Such co-sponsorship shall not prevent an unapproved provider from applying for individual approval of the activity in accordance with section 8. Where more than one of the co-sponsors is a State Bar approved provider, the certificate of attendance required by section 7.2.3 and any promotional materials shall state the name of the provider responsible for complying with section 7.2.

8.0 APPROVAL OF INDIVIDUAL EDUCATION ACTIVITIES

8.1 REQUIREMENTS FOR APPROVAL OF INDIVIDUAL EDUCATION ACTIVITIES

The education activities referred to in sections 4.1 and 4.2 may be approved upon the written application of providers on an individual basis. The provider must certify that the activity conforms to section 7.1 and agree to the requirements set forth in section 7.2. Approval may be granted for all presentations of the same education activity for up to two years from the date of the first presentation or the date of approval, whichever is earlier. Retroactive approval may be granted.

All applications for approval shall be submitted:

8.1.1 On a form provided by the State Bar;

8.1.2 With all information requested on the form, except that, in the event that the activity has not yet been presented, an application may be acted upon with or without the presentation date and location;

8.1.3 Along with a description that identifies the title, activity content and instructors, the time devoted to each topic, and, except as provided in section 8.1.2, each date and location at which the activity will be offered;

8.1.4 With a calculation of the total credit hours and legal ethics/ prevention, detection, and treatment of substance abuse/elimination of bias credit hours, as appropriate; and

8.1.5 Along with the appropriate activity approval fee.

8.2 EDUCATION ACTIVITIES PROVIDED BY THE CDAA AND THE CPDA

Education activities provided by the California District Attorneys Association and the California Public Defenders Association are deemed to be approved education activities.

9.0 APPROVAL OF PROVIDERS

Approval may be extended in advance to a continuing education provider for a period of time specified by the State Bar for all of the education activities referred to in sections 4.1 and 4.2 presented by such provider which it certifies conform to section 7.1, provided that it agrees to the requirements set forth in section 7.2. Approved providers are not required to seek approval pursuant to section 8.0 for the individual education activities sponsored while an approved provider.

9.1 REQUIREMENTS FOR APPROVAL OF PROVIDERS

All providers of continuing education activities, including in-house providers, are eligible to be approved providers. Applications for provider approval shall:

9.1.1 Be submitted on a form provided by the State Bar;

9.1.2 Contain all information requested on the form;

9.1.3 Be accompanied by the appropriate provider approval fee; and

9.1.4 Demonstrate that during the two years immediately preceding its application, the applicant has actually conducted at least four separate education activities, not including repeated presentations, that were approved pursuant to sections 7.3, 8.0 or 9.0. For purposes of section 9.1.4, each

MCLE RULES AND REGULATIONS

(adopted by Board of Governors 12/8/90; last revised 5/17/03)

presentation of a workshop or skills training activity (an education activity that includes the active participation of attendees in the form of interactive exercises, simulations, and demonstrations and therefore must be modified for the attendees at each presentation) will count as a separate education activity.

Education activities co-sponsored by an applicant that is not an approved provider and a State Bar approved provider shall not be counted towards such applicant's compliance with this requirement, unless such activity has been individually approved in accordance with sections 7.3 and 8.0. In the latter situation each co-sponsor shall be individually responsible for complying with sections 7.1 and 7.2.

9.2 RENEWAL OF PROVIDER APPROVAL

Subject to the requirements of section 9.1, the approval of any provider may be renewed for a period of time specified by the State Bar for all of the education activities referred to in sections 4.1 and 4.2 presented by such provider which it certifies conform to section 7.1. The renewal of an approved provider may be denied if the approved provider fails to comply with any of the requirements of these Rules and Regulations.

9.3 REVOCATION OF PROVIDER APPROVAL

Statewide associations of public agencies and incorporated, nonprofit professional associations of attorneys may be revoked only by a majority vote of the Board of Governors, after notice and hearing, and for good cause. The approval of all other approved providers may be revoked at any time when sufficient evidence demonstrates that the provider is not complying with section 7.1 or section 7.2.

9.4 APPROVAL OF SUBDIVISIONS OF APPROVED PROVIDERS

Subgroups or subdivisions (e.g. sections) of an approved provider need not obtain individual approval of an education activity which conforms to section 7.1, so long as the approved provider notifies the State Bar of its subgroups or subdivisions, actively monitors such activity, any promotional materials state the name of the approved provider, and the approved provider assumes full responsibility for ensuring compliance with the requirements of sections 7.1 and 7.2.

10.0 MEMBER REQUEST FOR CREDIT FOR AN EDUCATION ACTIVITY

A member may seek credit for an education activity that complies with the requirements of section 7.1 that has not been previously approved by completing a form provided by the State Bar and submitting it with the appropriate fee. The member must demonstrate that the activity is directly relevant to that member's practice.

11.0 GENERAL COMPLIANCE PROCEDURES

11.1 AFFIRMATIVE SHOWING OF COMPLIANCE

Each member shall provide an affirmative showing of compliance, in a manner acceptable to the State Bar of California, that the member has complied with the education requirement or is exempt and the nature of the exemption. Such affirmative showing must be provided to the State Bar no later than the day after the end of the member's compliance period.

11.2 MEMBER RECORDKEEPING REQUIREMENT

Members shall maintain sufficient proof of their compliance with the education requirement or their exempt status for at least one year from the date on which the member provides an affirmative showing of compliance to the State Bar of California. Members shall provide such proof of compliance or exempt status to the State Bar as the State Bar may require. However, members shall not submit certificates of attendance, hours of credit, etc., to the State Bar unless specifically requested to do so. The certificate of attendance that the provider must provide to the member pursuant to section 7.2.3 shall be a sufficient record of attendance at a participatory activity. A member's own record of self-study activities that includes, as appropriate, the title, provider, the amount of credit claimed for the education activity, including a breakdown of credit claimed for the subjects set forth in sections 2.1.1, 2.1.2, and 2.1.3 based on the formulas set forth in section 5.0, and the date on which the member engaged in the activity shall be a sufficient record of compliance for self-study.

12.0 NON-COMPLIANCE PROCEDURES

12.1 WHAT CONSTITUTES NON-COMPLIANCE

Non-compliance shall include any of the following:

12.1.1 Failure to complete the education requirement within the compliance period or any granted extension thereof;

12.1.2 Failure to provide an affirmative showing of compliance, in a manner acceptable to the State Bar of California (including an affirmative showing of exempt status);

12.1.3 Failure to provide satisfactory proof of compliance (including proof of exempt status) within the prescribed time after a request by the State Bar; or

12.1.4 Failure to pay all non-compliance fees within the time prescribed after a request by the State Bar.

12.2 NON-COMPLIANCE NOTICE AND 60-DAY PERIOD TO ATTAIN COMPLIANCE

Members failing to comply will receive a Non-Compliance Notice stating what the member must do to comply and will be given at least 60 days from the date of notification to comply with the requirements.

Such Notice shall inform members that those who fail to comply by the stated deadline will not be permitted to practice law until such time as adequate proof of compliance is received by the State Bar.

Members given at least 60 days to respond to a Non-Compliance Notice may use this period to attain the adequate number of credit hours for compliance. Credit hours earned during this period may only be counted toward compliance with the prior compliance period's requirement unless hours in excess of the requirement are earned, in which case the excess hours may be counted toward meeting the current compliance period's requirement.

12.3 NON-COMPLIANCE FEES

A member who, for whatever reason, is in non-compliance at the end of the compliance period shall pay all non-compliance fees upon request. Failure to pay all non-compliance fees within the prescribed time after a request by the State Bar shall constitute non-compliance with the requirements.

MCLE RULES AND REGULATIONS

(adopted by Board of Governors 12/8/90; last revised 5/17/03)

13.0 CONSEQUENCES OF NON-COMPLIANCE

13.1 ENROLLMENT AS INACTIVE MEMBER

A member failing to comply with the requirements after the 60-day period for compliance has expired shall be enrolled as an inactive member by the Board of Governors or an officer of the State Bar or his or her designee.

13.2 ENROLLMENT AS INACTIVE MEMBER ADMINISTRATIVE PROCESS

The enrollment pursuant to these rules and regulations is administrative in nature and no hearing is required.

13.3 ACCRUAL OF MEMBERSHIP FEE

Membership fees shall continue to accrue at the active rate against a member during the period he or she is enrolled as an inactive member pursuant to section 13.1.

14.0 REINSTATEMENT

14.1 PROCESS

The involuntary inactive enrollment of a member shall be terminated when the member provides proof of compliance with the minimum continuing legal education requirement (including payment of all non-compliance fees). A member may attain the necessary credit hours to meet the requirement for the period of non-compliance during the period the member is on inactive status. These credit hours may not be counted toward meeting the current compliance period's requirement. Credit hours attained during the period of non-compliance in excess of the number needed to satisfy the prior compliance period's requirement may be counted toward meeting the current compliance period's requirement.

14.2 TERMINATION OF INACTIVE ENROLLMENT ADMINISTRATIVE PROCESS

The termination of enrollment as an inactive member pursuant to these rules and regulations is administrative in nature and no hearing is required.

15.0 CONFIDENTIALITY

A member's status relating to the minimum continuing legal education requirement, as it relates to the compliance, non-compliance, or exempt status of the member, is not confidential and shall be disclosed upon request of any interested person. Other information provided to the State Bar or its representatives pursuant to these regulations shall be available for public inspection during business hours, except to the extent that disclosure is prohibited by law. Requests for lists of members shall be subject to the State Bar's Membership Lists Policy.

Rule Revision History

*Section 7.4 (amended 7/13/91)
Section 7.2.4 (amended 9/19/92)
Section 2.1.1 (amended 12/25/92)
Section 7.1.4 (amended 10/7/93)
Global (effective 9/1/95)
Section 6.1.6 (added 3/22/97)
Global (effective 9/1/97)
Section 2.1 (effective 10/27/00)
Global (effective 10/27/00)
Section 2.1.2 and administrative
corrections (effective 2/1/03)
Sections 6.3, 11 and 12 (amended 5/17/03)*